TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~321~~ 122

JOHN T. BUTLER, PLAINTIFF IN ERROR,

vs.

FRANCIS WATKINS AND THE PATENT NUT AND BOLT COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 3, 1870.

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1 Circuit court of the United States, fifth circuit, and district of Louisiana.

United States circuit court.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND PATENT NUT AND BOLT Company. } No. 5835.

Transcript from the fourth district court of New Orleans.—Filed April 22d, 1869.

Fourth district court, parish of Orleans.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND PATENT NUT AND BOLT Company. } No. 21996.

Petition.—Filed 9th January, 1869.

To the honorable the judge of the fourth district court for the parish of Orleans:

2 The petition of John T. Butler, a resident of the city of New Orleans, respectfully represents: That your petitioner, having invented a new and useful improvement for fastening cotton bales and other elastic substances, on the 15th day of November, 1869, obtained from the Government of the United States letters patent protecting your petitioner in the aforesaid invention for and during the term of fifteen years from and after the date aforesaid. That, in or about the month of February, A. D. 1868, and in the city of New Orleans, Francis Watkins, residing in the kingdom of Great Britain, then being in the said city for and in behalf of himself and the Patent Nut and Bolt Company, limited, located and doing business near Birmingham, England, had an understanding with your petitioner in relation to the manufacture and sale of your petitioner's invention, known as the "Butler cotton tie," for the year 1868; that the said Watkins, for himself and said company, promised your petitioner that shortly after the return of the said Watkins to England, to take place a few weeks after the
3 date aforesaid, certain formalities would be gone through, and the manufacture of the said ties commenced and completed in ample time for the business and demand of the year 1868. That, for a long time after the return of the said Watkins to England, which occurred in or about the latter part of March, or the first part of April, 1868, he, the said Watkins, and the said company, caused your petitioner to believe that the arrangement aforesaid would be carried out, and did not undeceive your petitioner until late in the summer of 1868, when it was impossible for petitioner to make any other arrangement for the manufacture and sale of the aforesaid cotton tie.

And your petitioner further shews unto your honor that the acts and doings of the said Watkins and said company, herein above set forth, were deceitful and in bad faith from beginning to end; that they were done for the purpose of imposing upon your petitioner and inducing him to give to the said Watkins and company the control of the

Butler cotton tie for the year 1868, with the hope thereby of
4 keeping your petitioner's tie out of the market, and by that means render more certain the sale of the Beard and others ties, in which the said Watkins and said company were greatly interested.

Further he shows unto your honor that the artful and deceitful acts of the said Watkins and said company were so perfectly carried out, and your petitioner so completely deceived, that the tie of your petitioner was kept from sale during the year 1868, and a large quantity of the Beard and other ties were sold and disposed of for the benefit of the said Watkins and the Patent Nut and Bolt Company.

And your petitioner shows unto your honor that, had he not *have* been deceived and imposed upon by the said Watkins and the said company, he would have kept the management of the aforesaid tie out of the hands of the said Watkins and said company, and under his own control, and would thereby have realized from the sale of the aforesaid tie during the year of 1868, at the least, thirty-five thousand dollars.

And your petitioner further shows unto your honor that, dur-
5 ing the time your petitioner was led to believe the aforesaid arrangement was in process of consum'ation, he, the said Watkins, and the said company, through the said Watkins and otherwise, undertook the management of your petitioner's tie, outside and irrespective of the aforesaid arrangement, and promised and obligated themselves that, until the said arrangement was completed, they would manufacture and sell your petitioner's, not to a large, but to a moderate amount, from which moderate amount, say one thousand tons, your petitioner would have realized at least twenty-five thousand dollars; that the said Watkins and the said company, so far from manufacturing and selling a moderate amount of the "Butler cotton tie," failed to manufacture or sell more than twenty-five tons of the same, and that while they thus neglected and failed to manufacture your petitioner's tie in a moderate amount, they manufactured or sold a large amount of other ties, in which said company and said Watkins were in-
6 terested, and from the sale of which they realized a large sum of money.

And your petitioner further shows unto your honor that the said Watkins and said company, by keeping your petitioner's tie concealed from public attention and out of the trade for one business year, and by other means, have caused your petitioner a prospective loss and damage in the sum of at least ten thousand dollars, and for which the said defendants are bound to indemnify your petitioner.

Wherefore your petitioner prays that the said defendants Francis Watkins and the Patent Nut and Bolt Company, limited, by and through Francis Watkins, acting manager of the company, may be cited to appear and answer this petition, that in due course of law they may be jointly and severally condemned to pay unto your petitioner the sum of seventy thousand dollars, with interest, according to law; that your petitioner recover costs and have general relief in the premises.

(Signed) LACEY & BUTLER,
Att'ys for Pet'r.

7 *Citation.*

State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT AND Bolt Company. } No. 21996.

Mr. FRANCIS WATKINS:

Your are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Paul E. Theard, judge of the said court, the 9th day of January, in the year of our Lord 1869.

(Signed) FRANK WALL,
Deputy Clerk.

8 *Return.*

Received January 11th, 1869, and on the same day served a true copy of the within petition and citation on the defendant, Mr. Francis Watkins, in person. Returned same day.

(Signed) G. L. BLOOMFIELD,
D'y Sheriff.

Citation.

State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND PATENT NUT AND BOLT CO. } No. 21996.

To Patent Nut and Bolt Company, through their agent, Francis Watkins:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district
9 court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Paul E. Theard, judge of the said court, the 9th day of January, in the year of our Lord, 1869.

(Signed) FRANK WALL,
Deputy Clerk.

Return.

Received January 11th, 1869, and on the 11th day of January, 1869, served a true copy of the within petition and citation on the defendant, Francis Watkins, in person.

Returned same day.

G. L. BLOOMFIELD,
D'y Sheriff.

Petition for removal of cause.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT AND Bolt Company, limited.

Pending in the 4th district court for the parish of Orleans.

To the honorable the judge of the said district court for the parish of Orleans:

10 The petition of Francis T. Watkins, on behalf of himself and of the Patent Nut and Bolt Company, limited, whose agent he is, respectfully shows to your honor, that he resides in the kingdom of Great Britain and Ireland, and is a subject of her Majesty Victoria, the Queen of said kingdom, and that the Patent Nut and Bolt Company is a corporation of the said kingdom, having its domicil and place of business in the same, and that they are defendants in the cause above stated, in which John T. Butler is plaintiff, and they are sole defendants, and that the matter in dispute is more than five hundred dollars, besides costs, as will appear from the petition in this cause, and that said plaintiff is a citizen of Louisiana; that your petitioner is desirous of removing the said cause to the circuit court of the United States for the district of Louisiana, according to the provisions of the 12th section of the judiciary act of Congress of 24th September, 1789, and to do the same he offers to give, on behalf of himself, and his
11 co-defendants, good & sufficient security for his entering in such court on the first day of its session, at the next term thereof copies of said process against him, and to do and abide in said court whatever may be required under the said act of Congress of the United States.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Def'ts.

Personally appeared before me, the undersigned, Mr. Francis T. Watkins, on behalf of himself and of the Patent Nut and Bolt Company, limited, who, being duly sworn, declares and says that all the facts and allegations in the above and foregoing petition contained are true.

(Signed) F. WATKINS.

Sworn to and subscribed before me this 13th January, 1869.
JOHN M. COONEY, *D'y Clk.*

Let this cause be transferred to the circuit court of the United States for the district of Louisiana upon the petitioner's furnishing bond
12 and security in the sum of five hundred dollars according to the provisions of the 12th section of the act Congress of 24th September, 1789.

New Orleans, 13th January, 1869.

PAUL E. THEARD, *Judge.*

Bond.—Filed January 13th, 1869.

Know all men by these presents that we, Francis Watkins and the Patent Nut and Bolt Company, as principals, and J. W. Stone, as surety, are held and firmly bound unto John T. Butler, his executors, adminis-

trators, and assigns in the sum of five hundred dollars, for the payment, whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 13th day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bound Francis Watkins and the Patent
13 Nut and Bolt Company have this day filed a petition to remove to the circuit court of the United States for the district of Louisiana the suit of John T. Butler vs. Francis Watkins and the Patent Nut and Bolt Company No. 21996 in the fourth district court for the parish of Orleans:

Now the condition of the above obligation is such, that the above-bound Francis Watkins and Patent Nut and Bolt Company shall transfer said cause to said circuit court, and shall prosecute the same according to the 12th section of the act of Congress of 24th September, 1789, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the said circuit court; otherwise that the said J. W. Stone shall be liable in their place.

F. WATKINS,
For Self and the Co.
J. W. STONE.

14 *Return.*

Received January 14th, 1869, and on the same day served copy of the within petition, affidavit, and order to transfer on John T. Butler, plaintiff herein through Lacey & Butler, attorneys, by personal service on Butler, esq., who accepted the same.
Returned same day.

H. F. LYND, *D'y Sh'ff.*

Clerk's certificate.

I, Joseph Hanlon, clerk of the fourth district court for the parish of Orleans, hereby certify that the foregoing 19 pages do contain a full, correct, and complete transcript of the record, including all proceedings had, documents filed, and evidence adduced wherein John T. Butler is plaintiff, and Francis Watkins and the Patent Nut and Bolt Company are defendants, which said cause was instituted in our said court on the 9th day of January, in the year of our Lord eighteen hundred and sixty-nine, and which now remains of record herein under the No. 21996.

In testimony whereof I have hereunto set my hand and affixed
15 the seal of said court, at the city of New Orleans, on the 21st day of January, A. D. 1869, and in the 93d year of the independence of the United States.

[SEAL.] (Signed) JOSEPH HANLON,
Clerk.

Judge's certificate.

I, Paul Emile Theard, sole judge of the fourth district court for the parish of Orleans, do certify that Joseph Hanlon is clerk of said court; that the same is a court of record, having common law jurisdiction; that the signature, Joseph Hanlon, to the foregoing certificate is in the

proper handwriting of him, the said Joseph Hanlon, clerk; that to his official acts as such full faith and credit are due and owing, and I do further certify that said attestation is in due form of law.

Given under my hand and seal at the place and on the day and date of the aforegoing certificate written.

[SEAL.] (Signed) PAUL E. THEARD,
Judge.

16 *Clerk's certificate.*

I, Joseph Hanlon, clerk of the fourth district court for the parish of Orleans, hereby certify that the Hon. Paul Emile Theard is sole judge of said court, duly commissioned, qualified, acting and presiding as such, and that the signature "Paul E. Theard" to the foregoing certificate is in the proper handwriting of him, the said Hon. Paul Emile Theard, judge.

In testimony whereof I hereunto set my hand, and affix*ed* the seal of said court, at the city of New Orleans, on the day and date to the first aforegoing certificate written.

(Signed) JOSEPH HANLON,
Clerk.

Petition.—Filed April 29th, 1869.

To the Hon. E. H. Durell, judge of the circuit court of the United States, fifth circuit and district of Louisiana:

The petition of John T. Butler, a citizen of the United States,
17 and of the State of Louisiana, residing and doing business in the city of New Orleans, in said State, respectfully represents that your petitioner, having invented a new and useful improvement for fastening cotton bales and other elastic substances, on the fifteenth day of November, A. D. 1859, obtained from the Government of the United States letters-patent protecting your petitioner in the aforesaid invention for and during the term of fifteen years, from and after the date aforesaid; that, in or about the month of February, A. D. 1868, and in the city of New Orleans, aforesaid, Francis Watkins, a subject of the kingdom of Great Britain, residing in Birmingham, England, then being in the said city of New Orleans, for and in behalf of himself and the Patent Nut and Bolt Company, limited, located and doing business near Birmingham, England, had an understanding with your petitioner in relation to the manufacture and sale of your petitioner's invention, known as the "Butler cotton tie," for the year 1868; that the
18 said Watkins, for himself and said company, promised your petitioner that, shortly after the return of the said Watkins to England, to take place a few weeks after the date aforesaid, certain formalities would be gone through, and the manufacture of said ties commenced and completed in ample time for the business and demand of the year 1868; that, for a long time after the return of the said Watkins to England, which occurred in or about the latter part of March, or the first of April, 1868, he, the said Watkins, and the said company, caused your petitioner to believe that the arrangement aforesaid would be carried out, and did not undeceive your petitioner until late in the summer of 1868, when it was impossible for petitioner to make any other arrangement for the manufacture and sale of the aforesaid cotton tie.

And your petitioner further shows unto your honor that the acts and

doings of the said Watkins and said company herein above set forth, were deceitful and in bad faith from beginning to end; that they
19 were done for the purpose of imposing upon your petitioner, and inducing him to give to the said Watkins and said company the control of the "Butler cotton tie," for the year 1868, with the hope thereby of keeping your petitioner's tie out of the arket, and by that means render more certain the sale of the Beard and other ties, in which the said Watkins and said company were greatly interested.

Further, he shows unto your honor that the artful and deceitful acts of the said Watkins and said company were so perfectly carried out, and your petitioner so completely deceived, that the tie of your petitioner was kept from sale during the year 1868, and a large quantity of the Beard and other ties were sold and disposed of for the benefit of the said Watkins and the Patent Nut and Bolt Company.

And your petitioner further shows unto your honor that, had he not *have* been deceived and imposed upon by the said Watkins and
20 said company, he would have kept the management of the aforesaid tie out of the hands of the said Watkins and said company, and under his own control, and would thereby have realized from the sale of the aforesaid tie during the year 1868, at least thirty-five thousand dollars ($35,000 00.)

And your petitioner further shows unto your honor that, during the time your petitioner was led to believe the aforesaid arrangement was in process of consum'ation, he, the said Watkins, and said company, through the said Watkins and otherwise, undertook the management of your petitioner's tie, outside and irrespective of the aforesaid arrangement, and promised and obligated themselves that, until the said arrangement was completed they would manufacture and sell your petitioner's tie—not to a large, but to a moderate amount—from which moderate amount, say one thousand tons, your petitioner would have realized at least twenty-five thousand dollars; that the said Wat-
21 kins and the said company, so far from manufacturing and selling a moderate amount of the "Butler cotton tie," failed to manufacture or sell more than twenty-five tons of the same; and that while they thus neglected and failed to manufacture your petitioner's tie in a moderate amount, they manufactured or sold a large amount of other ties, in which said company and said Watkins were interested, and from the sale of which they realized a large sum of money.

And your petitioner further shows unto your honor that the said Watkins and said company, by keeping your petitioner's tie concealed from public attention, and out of the trade for one business year, have caused your petitioner a prospective loss and damage in the sum of at lea t ten thousand dollars, and for which the said defendants are bound to indemnify your petitioner.

Wherefore your petitioner prays that the said defendants Francis Watkins and The Patent Nut and Bolt Company, limited, by and through Francis Watkins, acting manager of the company, may
22 be cited to appear and answer this petition, that in due course of law they may be jointly and severally condemned to pay unto your petitioner the sum of seventy thousand dollars, with interest, according to law; that your petitioner recover costs, and have general relief in the premises.

(Signed) LACEY & BUTLER,
Att'ys for Petitioner.

Answer.—Filed May 6th, 1869.

Circuit court of the United States, district of Louisiana.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT AND Bolt Co.

The said defendants, by their attorney, come, and for answer to the petition of the plaintiff, say that, all and singular, the averments and allegations of the petition are untrue, and that said plaintiff is not entitled to have or demand the sum of money specified in his petition, or any part of the same of them; and this they are ready to verify and maintain.

23 And the defendants deny that the said plaintiff has a valid patent for any cotton tie, or that he is an original or true inventor of any improvement in the same, but that the said pretended invention is, in point of fact, an infringement upon other patents of an older date, and has no validity.

They also deny that they ever came under any obligations to the said plaintiff in regard to the same; and now, having fully answered, the defendant prays to be hence dismissed, with costs.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Def'ts.

Supplemental petition, praying for trial by jury, and order thereon.—Filed June 25th, 1869.

United States circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
24 FRANCIS WATKINS AND THE PATENT Nut and Bolt Co., limited, Birmingham, England. } No. 5835.

To the Honorable E. H. Durell, judge of the United States circuit court, district of Louisiana:

The supplemental and amended petition of John T. Butler respectfully represents that petitioner is desirous of having the cause presented in the original petition filed herein, tried by a jury. Wherefore he prays for leave to file his supplemental and amended petition, and leave being granted, prays for a trial by jury.

(Signed) LACEY & BUTLER,
Attorneys.

Order.

Let the supplemental petition be filed as within prayed for, and let there be trial by jury in this case.

New Orleans, June 25th, 1869.

(Signed) E. H. DURELL, *Judge.*

Marshal's return.

25 Received August 9th, 1869, by the U. S. marshal, and on the 27th day of October, of same year, served copy of within supplemental petition on Campbell, Spofford, and Campbell, by handing the same to H. M. Spofford, of the above firm, in the U. S. marshal's office in this city.

New Orleans, October 29th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Motion and order.—Extract from the minutes.

United States circuit court, fifth circuit, and district of Louisiana, November term, 1869.

NEW ORLEANS, *Monday, January 31st*, 1870.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

JOHN T. BUTLER
vs.
THE PATENT NUT AND BOLT CO. AND F. WATKINS. } No. 5835.

C. W. WAILEY
vs.
26 THE PATENT NUT AND BOLT CO. AND F. Watkins. } No. 5837.

On motion of Campbell, Spofford & Campbell, of counsel for the defendants in these two causes, and their representing to the court that E J. Beard is an important and material witness for the above-named defendants, and that the said E. J. Beard is about to depart and go beyond the jurisdiction of the court and to be absent at the time when the said causes are fixed for trial, it is ordered that a commission issue to D. Urban, esq., U. S. Commissioner, to take the testimony of said witness, and that the said witness be notified to appear before him, on Wednesday next, at 6 p. m., and that the plaintiffs or their counsel be also notified to be present on the said day and at the said hour.

Hearing and continuance.—Extract from the minutes of Thursday, February 10th, 1870.

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

27 This cause was called for trial before the court and a jury—Lacey and Butler, E. T. Merrick, Brice & Mitchell for plaintiff, Campbell, Spofford, and Campbell, for defendants—when the following persons were called and sworn on the jury, to wit:

1. H. Gully; 2. David Urquhart; 3. W'm M. Abbott; 4. Eusche Reggio; 5. L. Jennings; 6. Samuel Chesse; 7. Ernest Miltenberger; 8. Edward Tomatis; 9. W'm B. Armstrong; 10. E. Picon; 11. Francois Victor; 12. Alex. McConnell.

And the jury being complete, the trial proceeded, and after hearing the pleadings and evidence, the cause is continued till to-morrow at 11 a. m.

**Hearing and continuance.—Extract from the minutes, Friday, February 11th, 1870.*

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

(Reference approved.)
D. URBAN, *Clerk.*

This cause was resumed and the jurors sworn and counsel engaged being present, the trial proceeded, and after hearing further evidence, the cause is continued till 14th inst., at 11 a. m.*

Hearing and continuance.—Extract from the minutes of Monday, February 14th, 1870.

JOHN T. BUTLER.
vs.
F. WATKINS & AL. } No. 5835.

This cause was resumed before the court and jury, and after
28 hearing further evidence and argument, the cause is continued till to-morrow, 15th inst., at 11 a m.

Hearing and continuance.—Extract from the minutes of Tuesday, February 15th, 1870.

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

This cause was resumed before the court and jury, and after hearing further argument, the same is continued till to-morrow, at 11 a. m., and that the jury be discharged till that day and hour.

Hearing and verdict of jury.—Extract from the minutes of Wednesday, February 16th, 1870.

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

This cause was resumed, and after hearing further argument and receiving a charge from the court, Mr. Abbott was appointed
29 foreman of the jury, and they retired to consider on their verdict. After due deliberation, they returned into court and delivered the following verdict, to wit:

NEW ORLEANS, *February 16th*, 1870.

We, the jury, find a verdict in favor of the defendants

W'M M. ABBOTT,
Foreman.

Whereupon it is ordered that the verdict be recorded, and that in accordance therewith, judgment be entered in favor of the defendants, with costs.

Bill of exceptions.—Filed February 16th, 1870.

United States circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT AND BOLT CO. } No. 5835.

Be it remembered that upon the trial of this cause before the jury, plaintiff's counsel offered to read in evidence certain letters written by the defendants to Cha's Wailey, in the spring and early
30 part of the summer of 1868, wherein the said defendants led the said Wailey to believe that the contract between himself and Francis Watkins, managing director of the Patent Nut and Bolt Co, had been recognized by defendants and would be by them carried out; and in connection therewith, the testimony of Wailey, for the purpose of proving that the letters, similar in many respects to those written to Butler and offered in evidence, were false and deceitful acts on the part of defendants done in order to keep Wailey's tie out of the market during the year 1868. The said letters were offered by counsel in connection with the testimony of said Wailey for the purpose of showing the fraudulent and deceitful conduct of the defendants in keeping the cotton tie of said Wailey out of the market in the year 1868, in order to advance the interests of defendants by a sale of the Beard tie, with the object of showing to the jury the systematic manner and course of the
31 defendants in fraudulently preventing the sale of other cotton ties, and thereby to establish the fraud and deceit of defendants in relation to plaintiff's tie, as charged and set forth in the petition, and generally to prove the deceitful and fraudulent conduct and bad faith of defendants in keeping the tie of plaintiff from sale during the entire year of 1868.

To the introduction of the letters, (and the testimony of Wailey in relation thereto,) the counsel for defendants objected, upon the ground that the letters of defendants to Wailey, and his testimony in relation thereto, cannot be proved for the purpose of establishing thereby fraud and deceit on the part of the defendants towards plaintiff; that if such fraud and deceit existed, it must be established by proof of the acts and conduct of said defendants towards Butler, not towards Wailey.

The court considered that the acts and conduct of defendants toward Wailey, not being the subject-matter of the present action, could
32 not be enquired into herein, not even with the view of showing the animus which actuated defendants in their acts and doings with Butler; and for those reasons sustained the objection and refused to permit the letters to be read in evidence, or the testimony of Wailey in relation thereto, to be heard.

To this decision of the court, counsel for plaintiff then and there excepted and have respectfully tendered this their bill of exceptions for my signature and seal, which I have signed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Bill of exceptions.—Filed February 16th, 1870.

U. S. circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
F. WATKINS AND THE PATENT NUT AND BOLT Company.

33 Be it remembered that upon the trial of this cause, it appeared in evidence that Francis Watkins was managing director and one of the largest stockholders of the Patent Nut and Bolt Co., and that in the month of January, 1868, he came to the city of New Orleans in the interest of that company.

Moreover, testimony was introduced by counsel for plaintiff, tending to show to the jury that while the said Watkins was in New Orleans in January, 1868, attending to the interests of the Patent Nut and Bolt Company, an understanding was had between plaintiff and said Watkins, acting in behalf of himself and said company, for the manufacture and sale of plaintiff's tie upon the terms and conditions named and set forth in the document "A," a copy of which is hereunto annexed and made a part hereof, and which document was introduced in evidence. That when said document was handed to said Watkins he wrote to the plaintiff the letter offered in evidence, a copy of which, marked
34 "B," is annexed to this bill of exceptions and made a part hereof. That thereupon plaintiff expressed his willingness to sign the same, but was told by said Watkins that the said document "A" would have to be sent to England to undergo certain formalities to make it complete in form only. That the said agreement "A" was taken to England by said Watkins, and by the artifice and fraud of defendants was never consummated or completed in form, and that the acts and conduct of defendants were deceitful and fraudulent from the commencement to the end, and done for the purpose of keeping plaintiff's tie out of the market and thereby securing heavy sales of the Beard tie, in which defendants were largely interested.

Defendant's counsel requested the court to charge the jury "that to bind plaintiff by the terms of the proposed agreement, called the draft agreement, (Doc't "A,") his signature must have been put to the
35 same, and so long as it was unsigned, it was on his part only an overture or a proposition from which he might withdraw at any time before signature."

The court gave the charge as required by defendant's counsel, and when given, plaintiff's counsel then and there respectfully, and before the jury had retired, excepted to such charge, and have tendered this their bill of exceptions for my signature and seal, which I have signed and sealed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Document A.—Annexed to foregoing bill of exceptions by the judge, making part thereof, and filed with the same.

This agreement and license made this first day of February, A. D 1868, by and between John T. Butler, of the city of Natchez, State of Mississippi, of the first part, and F. Watkins, of the Patent Nut and Bolt Company, of Birmingham, England, of the second part, wit-
36 nesseth: That, whereas the party of the second part *are* desirous

of acquiring the use of the Butler patent cotton tie, together with all patents the party of the first part that have been taken out and may be taken out by him for cotton or other ties.

Now these presents witnesseth: That, for and in consideration of the agreement as hereinafter stipulated by the party of the second part, the party of the first part hereby agrees to give to them the exclusive right of making and having manufactured and selling hoops and buckles or cotton ties under said Butler's patent, for and during the full terms of said patents from date, in all the States of the United States, India, Egypt, and South America, together with any other country where the party of the second part may see fit to introduce ties. And the party of the second part agrees to manufacture or cause to be manufactured in England, America, or elsewhere, at as low a price as can be done in England or elsewhere, a sufficient quantity of said Butler's patent cotton ties to supply the demand for the same in the United States,
37 India, Egypt, or elsewhere, and personally and through their agents to make vigorous exertions to introduce said cotton tie in all countries where cotton ties can be sold. The said cotton ties to be shipped to agents appointed by them, and sold, and after payment of invoice, cost, and all charges, the net profits to be divided equally between the said John T. Butler, his heirs or assigns, and the said F. Watkins Patent Nut and Bolt Company. The said John T. Butler to give a reasonable portion of his time and attention introducing said cotton ties in the United States, where they are unknown, as well as known, without any charge therefor. And the party of the second part agrees to push the sales of said Butler's cotton ties in all countries where ties can be sold. And the party of the second part shall keep correct accounts and books and render statements every three months, said books to be inspected by the party of the first part whenever he chooses so to do. And the party of the first part shall, at the time fixed for the rendition of the quarterly statements as aforesaid,
38 be entitled to one-half of the net profits made on said cotton ties, payable on demand. And should the party of the second part at any time refuse to render a just and true account of the sales and profits as agreed upon, or fail to make payments as herein stipulated within a period of thirty days after demand, or should without lawful cause fail to keep all the markets of which they have the control, supplied with the said Butler cotton ties, the party of the first part reserves the right to wholly withdraw this license and make it null and void, with the right to be indemnified in accordance with law and equity for all such losses and damages as the party of the first part may sustain by reason of the conduct of the party of the second part in not rendering accounts, paying the amount due or supplying the markets as herein contemplated and agreed upon. It is agreed that the party of the second part shall not be bound to manufacture or supply the markets as aforesaid in case they have notice to stop manufacturing,
39 charged with infringement of other patents, unless the party of the first part will fully indemnify the party of the second part as to damages and costs.

Document B, annexed to the foregoing bill of exceptions by the judge, making part thereof, and filed with the same.

ST. CHARLES HOTEL, *Feb'y 3d*, 1868.

DEAR SIR: I have read the draft agreement, and find it to be about the thing. I will have the same put in shape on my arrival home, and

let you have 2 copys, one to retain, the other to return to me. New Orleans is accepted only for 1868. You will please let me have the names of your friends who will testify to goodness of your ties, &c.

I expect to leave here for Mobile to night.

Yours truly.

F. WATKINS.

——— BUTLER, Esq., *New Orleans.*

40 *Bill of exceptions.—Filed February 16th*, 1870.

U. S. circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT AND Bolt Company.

Be it remembered that, upon the trial of this cause, it appeared in evidence, that Francis Watkins was managing director, and one of the largest stockholders of the Patent Nut and Bolt Company; and that, in the month of January, 1868, he came to the city of New Orleans, in the interest of that company. Moreover, testimony was introduced by counsel for plaintiff, tending to show to the jury that, while the said Watkins was in New Orleans, in January, 1868, attending to the interest of the Patent Nut and Bolt Company, an understanding was had between plaintiff and said Watkins, acting on behalf of himself and said company, for the manufacture and sale of plaintiff's tie,

41 upon the terms and conditions named and set forth in the document "A," annexed to another bill of exceptions, and made part of this bill, and which document was introduced in evidence; that, when said document was handed to said Watkins, he wrote to the plaintiff the letter, offered in evidence, a copy of which, marked "B," is annexed to another bill of exceptions, and made a part thereof; that thereupon plaintiff expressed his willingness to sign the same, but was told by said Watkins that the said document "A" would have to be sent to England to undergo certain formalities to make it complete, in form only; that the said agreement "A" was taken to England by said Watkins, and by the artifice and fraud of the defendants, was never consu'mated or completed in form, and that the acts and conduct of defendants were deceitful and fraudulent from the commencement to the end, and done for the purpose of keeping plaintiff's tie out of the market, and thereby securing heavy sales of the Beard tie, in which defendants were largely interested.

42 Defendant's counsel requested the court to charge the jury "that, if the jury believe that Watkins declined to sign the draft agreement, and informed the plaintiff that it must go before the board of directors of the company and be examined by the board, and put in form, with the corporate seal attached thereto to render it valid, it was a notice to the plaintiff that the agreement was not completed, and that it was not obligatory upon either party until it was completed in that manner, or some other sufficient to bind the company."

The court gave the charge as requested by defendants' counsel, and when given, the plaintiff's counsel then and there, and before the jury had retired, respectfully excepted to such charge, and have tendered this their bill of exceptions for my signature and seal, which I have signed and sealed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

43 Document A, referred to in the foregoing bill of exceptions, to be found transcribed at page 35.

Document B, referred to in the foregoing bill of exceptions, to be found transcribed at page 39.

Bill of exceptions.—Filed February 16th, 1870.

U. S. circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
F. WATKINS AND THE PATENT NUT AND BOLT Company.

Be it remembered that, upon the trial of this cause, it appeared in evidence that Francis Watkins was managing director, and one of the largest stockholders of the Patent Nut and Bolt Company, and that in the month of January, 1868, he came to the city of New Orleans in the interest of that company; moreover testimony was intro-
44 duced by counsel for plaintiff, tending to show to the jury that, while the said Watkins was in New Orleans, in January, 1868, attending to the interests of the Patent Nut and Bolt Company, an understanding was had between plaintiff and said Watkins, acting in behalf of himself and said company for the manufacture and sale of plaintiff's tie, upon the terms and conditions named and set forth in the document "A," annexed to another bill of exceptions, taken in this cause and made a part of this bill, which document was introduced in evidence; that when said document was handed to said Watkins, he wrote to the plaintiff the letter offered in evidence, a copy of which, marked "B," is annexed to another bill of exceptions and made part hereof; that thereupon plaintiff expressed his willingness to sign the same, but was told by said Watkins that the said document A would have to be sent to England to undergo certain formalities to
45 make it complete, in form only; that the said agreement "A" was taken to England by said Watkins, and by the artifice and fraud of the defendants, was never consummated or completed in form; and that the acts and conduct of defendants were deceitful and fraudulent, from the commencement to the end, and done for the purpose of keeping plaintiff's tie out of the market and thereby securing heavy sales of the Beard tie, in which defendants were largely interested.

Defendants' counsel requested the court to charge the jury that it was entirely within the power of the plaintiff, at any time pending the negotiation or discussion, to demand an immediate answer to his proposal or to reject the proposal, even if it had been adopted by the company, sealed with their seals, exactly as drawn, on its return by the company or their agent for his signature.

The court, as requested, gave the charge to the jury, but added:

"I give you that charge under the supposition that the facts are
46 found to be as contemplated in that charge. Either party, before the paper was signed, had the right to retire. It is something like a sale of real estate in this State. A man may agree to sell a house to me for $10,000, and I may agree to take it at that price, but until the act of sale is drawn up in writing and signed by the parties, neither is bound either to sell or purchase that house. The agreement must be in writing, and signed."

The court gave the charge in manner and form as hereinabove set

forth, and when given, plaintiff's counsel then and there, and before the jury had retired, respectfully excepted to such charge, and have tendered this their bill of exceptions for my signature and seal, which I have signed and sealed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Document A, referred to in the foregoing bill of exceptions, to be found transcribed at page 35.

Document B, referred to in the foregoing bill of exceptions,
47 to be found transcribed at page 39.

Bill of exceptions.—Filed February 16th, 1870.

United States circuit court, district of Louisiana.

JOHN C. BUTLER
vs.
F. WATKINS AND PATENT NUT AND BOLT CO.

Be it remembered that, upon the trial of this cause, plaintiff had proved that Francis Watkins was the managing director and the largest stockholder in the Patent Nut and Bolt Company, and in such capacity had come to the United States in January, 1868, to attend to all interests of such corporation, particularly in reference to the manufacture and sale of cotton ties; that in an interview with plaintiff he had informed him that he was duly authorized to bind the company to any contract for the making and selling of his tie, and whatever
48 he would do in relation to such manufacture and sale of plaintiff's tie would be binding upon the defendants; that the agreement offered in evidence hereunto annexed and made part of this bill was drawn up and assented to by said Watkins; that it was taken by said Watkins to Europe to be completed, in form only, and then to be returned to plaintiff for his signature.

Defendants' counsel thereupon requested the court to charge the jury, and by such request the court did charge the jury as follows:

"That if the jury believe the corporation never gave any authority to the defendant Watkins to assent to the proposal or draft agreement in their behalf, and in their name, and never sanctioned the same as a corporate act, the suit cannot be maintained against them.

To the aforesaid charge, given at the request of defendants' counsel, then and there, and before the jury had retired, counsel for plaint-
49 iff respectfully excepted, and have tendered this their bill of exceptions for my signature, which I have signed and sealed this sixteenth day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Agreement annexed to foregoing bill of exceptions by the judge, making part thereof, and filed with the same.

A.

This agreement and license made this first day of February, A. D. 1868, by and between John T. Butler, of the city of Natchez, State of Mississippi, of the first part, and F. Watkins, of the Patent Nut and Bolt Company, of Birmingham, England, of the second part, witnesseth: That, whereas the party of the second part are desirous of acquiring the use of the Butler patent cotton tie, together with all patents the party of the first part that have been taken out and may be taken

out by him, for cotton or other ties. Now, these presents witnesseth: That for and in consideration of the agreement as hereinafter stipulated by the party of the second part, the party of the first part hereby
50 agrees to give them the exclusive right of making and having manufactured, and selling, hoops and buckles, or cotton ties, under said Butler'sp atents, for and during the full terms of said patents, from date, in all States of the United States, India, Egypt, and South America, together with any other country where the party of the second part may see fit to introduce ties. And the party of the second part agrees to manufacture, or cause to be manufactured, in England, America, or elsewhere, at as low a price as can be done in England or elsewhere, a sufficient quantity of said Butler's patent cotton ties, to supply the demand for the same in the United States, India, Egypt, or elsewhere, and personally, and through their agents, to make vigorous exertions to introduce said cotton ties in all countries where cotton ties can be sold. The said cotton ties to be shipped to agents appointed by them, and sold; and after payment of invoice, cost, and all charges, the net profits to be divided equally between the said John T. Butler, his heirs, or assigns, and the said F. Watkins Patent Nut and Bolt
51 Company; the said John T. Butler to give a reasonable portion of his time and attention introducing said cotton ties in the United States, where they are unknown as well as known, without any charge therefor. And the party of the second part agree to push the sales of the said Butler's patent cotton ties in all countries where ties can be sold. And the party of the second part shall keep correct accounts and books, and render statements every three months, said books to be inspected by the party of the first part whenever he chooses so to do. And the party of the first part shall, at the time fixed for the rendition of the quarterly statements as aforesaid, be entitled to one-half of the net profits made on said cotton ties, payable on demand. And should the party of the second part at any time refuse to render a just and true account of the sales and profits, as agreed upon, or fail to make the payments as herein stipulated within a period of thirty days after demand, or should, without lawful cause, fail to keep all the mar-
52 kets of which they have the control supplied with the said Butler cotton ties, the party of the first part reserve the right to wholly withdraw this license, and make it null and void, with the right to be indemnified, in accordance with law and equity, for all such losses and damages as the party of the first part may sustain by reason of the conduct of the party of the second part in not rendering accounts, paying the amount due, or supplying the markets, as herein contemplated and agreed upon. It is agreed that the party of the second part shall not be bound to manufacture or supply the markets as aforesaid in case they have notice to stop manufacturing, charged with infringements of other patents, unless the party of the first part will fully indemnify the party of the second part as to damages and costs.

Bill of exceptions.—Filed February 16th, 1870.

U. S. circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
53 FRANCIS WATKINS AND THE PATENT NUT and Bolt Co.

Be it remembered that, upon the trial of this cause, it appeared in

evidence that Francis Watkins was managing director and one of the largest stockholders of the Patent Nut and Bolt Co., and that, in the month of January, 1868, he came to the city of New Orleans in the interest of that company.

Moreover testimony was introduced by counsel for plaintiff tending to show to the jury:

That, while the said Watkins was in New Orleans, in January, 1868, attending to the interests of the Patent Nut and Bolt Co., an understanding was had between plaintiff and said Watkins—acting in behalf of himself and said company—for the manufacture and sale of plaintiff's tie, upon the terms and conditions named and set forth in the document "A," annexed to another bill of exceptions and made part of this bill, which document was offered in evidence.

54 That when said document was handed to said Watkins he wrote to the plaintiff the letter offered in evidence, a copy of which, marked B, is annexed to another bill of exceptions, and made a part hereof; that thereupon plaintiff expressed his willingness to sign the same, but was told by said Watkins that the said document "A" would have to be sent to England to undergo certain formalities to make it complete, in form only; that the said agreement "A" was taken to England by said Watkins, and, by the artifice and fraud of the defendants, was never consum'ated or completed in form; and that the acts and conduct of defendants were deceitful and fraudulent from the commencement to the end, and done for the purpose of keeping plaintiff's tie out of the market, and thereby securing heavy sales of the Beard tie, in which defendants were largely interested.

Counsel for defendants requested the court to read to the jury the following extract from the agreement of February 1st, 1868, ("A")

55 and which agreement had been offered in evidence, viz:

"That, whereas the party of the second part are desirous of acquiring the use of Butler's patent tie, together with all patents of the party of the first part that have been taken out, and may be taken out, by him for cotton or other ties: Now, these presents witnesseth: That, for and in consideration of the agreement, as herein stipulated by the party of the second part, the party of the first part hereby agrees to give them the exclusive right of making and having manufactured and selling, hoops, buckles, or cotton ties, under said Butler's patents, for and during the full term of said patents from date, in all the States of the United States, India, Egypt, and South America, together with any other country where the party of the second part may see fit to introduce said ties."

The court having read the above extract to the jury, was requested by defendants to charge the jury as follows:

"That the proposed agreement, containing the words above, is a

56 conveyance of the exclusive right under the said patents produced in evidence, and must have been, under the laws of the United States, in writing, signed by the patentee, to give it validity against the patentee, and recorded in the Patent Office to have a complete and binding effect against the patentee, together with all other persons."

The court gave the charge as requested by defendant's counsel.

The court then remarked:

"GENTLEMEN OF THE JURY: This paper I have read to you contem-

plated the sale of the patent rights of Butler to the Patent Nut and Bolt Co., and the consideration of that sale was to be one-half of the net profits, *as* what is generally called a royalty. I give you this charge that the contract contemplated in this paper was a contract for the sale of the rights of the patentee, and therefore was a contract which falls within the registration section of the law, which I have already read to you, but which I will read again:

57 "'Every patent shall be assignable in law, either as to the whole interest or any undivided part thereof, by any instrument in writing, which assignment, and also every grant and conveyance of the exclusive right, under the patent, to make and use the thing patented within and throughout any specified part or portion of the United States, shall be recorded within three months from the execution thereof.'"

The court gave the charge as above mentioned, and when given, plaintiff's counsel then and there and before the jury retired, respectfully excepted to such charge, and have tendered this their bill of exceptions for my signature and seal, which I have signed and sealed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Document A, referred to in the foregoing bill of exceptions, to be found transcribed at page 35.

58 Document B, referred to in the foregoing bill of exceptions, to be found transcribed at page 39.

Bill of exceptions.—Filed February 16th, 1870.

United States circuit court, district of Louisiana.

JOHN T. BUTLER
vs.
F. WATKINS AND THE PATENT NUT AND BOLT CO.

Be it remembered that in the petition it is alleged, and in argument before the jury it was urged, that the defendants had, outside of the arrangement in New Orleans, undertaken the immediate manufacture of plaintiff's tie, until the New Orleans understanding or arrangement could be put in form; that defendants had thereby become the negotiorum gestores of plaintiff, and had assumed the responsibility in the manufacture of plaintiff's tie, at least in the year 1868, to do the best they could for the interest of plaintiff, and were responsible for any damages suf-

59 fered by plaintiff from their neglect of duty. The letter, of which the annexed is a copy and made part hereof, together with other correspondence were offered in evidence by plaintiff, among other things, to sustain the allegations aforesaid.

Notwithstanding those facts, the court, at the request of defendants' counsel, charged the jury:

"That, upon a just construction of the correspondence, the offers of the defendants in the name of the corporation, were entirely voluntary offers, and, by the terms of the correspondence, were subject to their own control as to the extent to which shipments were to be made, and that there was no responsibility imposed by the loss of the shipment to Savannah, or the failure to make any other shipments."

The court said: "The charge takes the question of fact out of the hands of the jury, and turns it over to the court. The jury have heard the correspondence read; they must judge of it as they please. They are the best judges of the case. I say that I will give that charge
60 to the jury with the proviso, that the jury thinks that all that correspondence was not got up in fraud. If they are convinced that it was written in fraud, and was part of a regular scheme for the purpose of injuring the plaintiff, this charge does not apply. The jury will judge of that."

The court also charged the jury at the request of defendants' counsel, as follows:

"That neither of the defendants are responsible to the plaintiff for any delay or consequences of delay, in the discussion of the terms of the proposed agreement, under the testimony before the court."

The court, however, added: "I will give you that charge with the proviso that the jury, under the testimony before them, came to the conclusion that this discussion and delay of settlement were not part and parcel of a settled scheme of fraud."

To the charge as given, the counsel for plaintiff then and there, and before the jury retired, excepted, and have respectfully tendered
61 this their bill of exceptions for my signature and seal, which I have signed and sealed this 16th day of February, A. D. 1870.

(Signed) E. H. DURELL, *Judge.* [L. S.]

The letter annexed to the foregoing bill of exceptions by the judge, making part thereof, and filed with the same.

LONDON WORKS, NEAR BIRMINGHAM,
April 17th, 1868.

JOHN T. BUTLER, Esq.

MY DEAR SIR: I have laid your proposition before my co-directors, and they have given same their favorable consideration; but you will understand that we Englishmen are very particular as to what we do—more so than Americans; we are not quite so fast in promising, but are generally faithful to our promises. There are a few facts in relation to cotton ties and cotton-tie business to be considered before the agreement is completed. In the meantime we have commenced the manufacture of your tie and will send the first shipment (which will be small)
62 to Mobile or New Orleans for Memphis, as tonnage may offer. The ties which we send out will be forwarded without prejudice, whether the agreement is finally sealed by my company or otherwise, and will be disposed of on the same terms as named in your agreement proposal, that is, with the understanding that we first take from the proceeds of sales our manufacturing price of £11 per ton, and then all other charges, such as freight, commission, insurance, storage, &c., paying you one-half of the balance as royalty.

As to the quantity which we shall send out this season, future information which we may gather from this country and America will determine. We hope to get a sample lot in all important places, so as to have the tie well reported on for next year's business. For your information I give you below the number of bales of cotton received into the port of Liverpool in 1867, viz:

America	1,220,335
Brazil	433,946
Egypt	197,788
West Indies	107,047
East Indies	1,263,266
China and Japan	894
Bales	3,223,276

63 I hope you will keep me fully posted as to cotton-tie business. With kind regards, hoping yourself and family are well, I am, my dear sir,

Yours very truly,

F. WATKINS.

P. S. I was well pleased with your brother-in-law, Mr. Wood, of New York, and should have been glad to have seen your other friends. I am obliged for your kind wishes as to Mrs. Watkins' health; I found her very unwell, but she is now somewhat better. It is very important that you carry out successfully your suit against McComb the arrow-tie proprietor. If you do not beat him he will upset your patent in America.

Rule for a new trial.—Extract from the minutes of Saturday, 19th day of February, 1870.

JOHN T. BUTLER *vs.* F. WATKINS & AL. } No. 5835.

On motion of Lacey & Butler and Merrick and Brice, counsel
64 for plaintiff: Ordered, that defendants show cause on the 4th day of March, 1870, at 11 a. m., why a new trial should not be granted in the above cause; and it is further ordered that plaintiff have until Wednesday, 23d instant, inclusive, to file written reasons or grounds for new trial.

Grounds for new trial.—Filed February 23d, 1870.

United States circuit court, district of Louisiana.

JOHN T. BUTLER *vs.* F. WATKINS AND THE PATENT NUT AND BOLT CO. } No. 5835.

Grounds for new trial.

First. Counsel for plaintiffs having offered as evidence certain letters of defendants to one Cha's Wailey, and in connection therewith the testimony of Wailey, for the purpose of showing that the defendants had been guilty of fraud and deceit towards said Wailey in keep-
65 ing Wailey's cotton tie out of market in the year 1868, and thereby to show the animus or fraud which actuated defendants in their acts and doings towards plaintiff, as charged in the petition, the court erred in rejecting such evidence and in refusing to permit these facts to go to the jury, that the jury might determine what weight to give to them. The objection of defendants' counsel went to the effect, not to the admissibility, of the evidence.

Second. The court erred in charging the jury to the effect that the corporation was not bound by the New Orleans agreement unless the same had been entered into by Watkins, under an authority specifically given to him for that particular purpose, or until submitted to the company and approved.

Third. The court erred in charging the jury that the agreement to manufacture ties, made in New Orleans, was, in the absence of signatures, merely an overture or proposal, and from which the parties might, at any time before signature, withdraw.

Fourth. The court erred in charging the jury that the contract
66 to manufacture plaintiff's tie was not complete or binding upon either party until a formal act of agreement had been signed by them. The agreement became complete by the mere assent of both parties, and could be established by any legal evidence proving the fact, other than the formal contract or agreement which was contemplated to be signed. If a contract or agreement is never obligatory until signed, a party could never be held responsible for his failure to close the agreement. It would remain nothing but an overture or proposal.

Fifth. The court erred in charging the jury that the contract under consideration stood upon the same footing as a contract for the sale of real estate.

The court also erred in charging the jury that the signatures to the agreement was of the essence of the contract, and that without such signatures the agreement had no binding force or effect.

Further, the court erred in not informing the jury that the present
67 action was in part based upon fraud and deceit in not signing the contract, and therefore the want of signature could not be pleaded in defense.

Sixth. The court erred in charging the jury that, fraud aside, neither of the defendants, under the testimony before the court, are responsible to the plaintiff for any delay, or consequences of delay in the discussion and settlement of the terms of the proposed agreement. The court should not have left simply the question of fraud to be tried by the jury upon the evidence, but any and all issues presented by the pleadings, so that the jury, upon the evidence, might determine whether or not the defendants, in the absence of fraud, were responsible to plaintiffs for any delay, or consequences of delay, in the discussion of the terms of the proposed agreement.

Seventh. The court erred in charging the jury that the contract or agreement made in New Orleans, and referred to in the testimony of
68 plaintiff, was embraced within the provisions of the act of Congress relative to the assignment of patents; and also erred in charging the jury that the contract or assignment aforesaid was void and without effect, and was not, as between the parties, binding, because not registered in the Patent Office of the United States.

Eighth. The court erred in permitting the request to charge, as originally drawn up by the counsel for defendant, unaccompanied by the explanations or modifications to which such requested charges had been subjected by the court, to be taken by the jury to their room, and by them kept when deliberating over their verdict.

Ninth. The verdict of the jury is clearly contrary to the law and the evidence.

Tenth. The jury erred in not regarding the outside arrangement relative to the manufacture of plaintiff's tie during the time the contract between plaintiff and defendants was held back for the purpose of

being completed in form, and in not subjecting the defendants to responsibility, as negotiorum gestores, in manner and form as charged in the petition.

(Signed) LACEY & BUTLER,
Of Counsel.

69 *Marshal's return.*

Received February 24th, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within grounds for a new trial on the defendants herein, through John A. Campbell, one of their attorneys of record, by delivering the same to him, the said attorney, in person.

New Orleans, February 24th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

Hearing and submission of rule.—Extract from the minutes of Tuesday, April 12th, 1870.

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

The rule for a new trial herein pending was called—
Brice and Mitchell for plaintiff in rule—
And, after hearing argument, the court took time to advise.

Order.—Rule for a new trial refused.—Extract from the minutes
70 *of Thursday, April 14th, 1870.*

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

For reasons orally assigned by the court, it is ordered that plaintiff's rule of 23d February, 1870, be dismissed, and a new trial refused, with costs.

Verdict and judgment.—Extract from judgment docket.

Circuit court of the United States, fifth circuit, and district of Louisiana, November term, 1869.

NEW ORLEANS, *Wednesday, February 16th*, 1870.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

JOHN T. BUTLER
vs.
F. WATKINS & AL. } No. 5835.

This cause was resumed, and, after hearing further argument and receiving a charge from the court, Mr. Abbott was appointed foreman of

the jury, and they retired to consider on their verdict; and, after
71 due deliberation, they returned into court and delivered the following verdict, to wit:

NEW ORLEANS, *February 16th*, 1870.

We, the jury, find a verdict in favor of the defendants.

W. M. ABBOTT,
Foreman.

Whereupon it is ordered that the verdict be recorded, and that, in accordance therewith, judgment be entered in favor of the defendants, with costs.

Judgment rendered February 16th, 1870.

Judgment signed April 16th, 1870.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error and order thereon.—Filed May 27th, 1870.

United States circuit court, fifth circuit, and district of Louisiana.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT and Bolt Company. } No. 5835.

To the honorable the judges of the circuit court of the United
72 States in and for the fifth circuit, and holding sessions for the district of Louisiana:

The petition of John T. Butler respectfully represents that, on the 16th day of April, A. D. 1870, in the above-entitled and numbered cause, a verdict and judgment has been rendered by this honorable court in favor of the defendants, Francis Watkins and the Patent Nut and Bolt Company. That your petitioner considers that manifest error has happened to the great injury and damage of petitioner, and feeling aggrieved by such verdict and judgment, he desires to prosecute a writ of error from the aforesaid judgment before the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed from the judgment herein above referred to, returnable before the Supreme Court of the United States, in accordance with law, upon petitioner's giving bond in such sum as may be required, conditioned according to law, and with Elijah Peale as his surety.

(Signed) LACEY & BUTLER,
Of Counsel.

73 *Order.*

A writ of error is allowed in this case, as prayed for, returnable to the Supreme Court of the United States, on the first Monday in December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

May 27th, 1870.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed May 27th, 1870.

United States circuit court.

JOHN T. BUTLER
vs.
FRANCIS WATKINS AND THE PATENT NUT and Bolt Company. } No. 5835.

Know all men by these presents that we, John T. Butler as principal and Elijah Peale as surety, are held and firmly bound, unto Francis Watkins and the Patent Nut and Bolt Company, limited, and to whomsoever it may concern, in the full and just sum of five hundred
74 dollars, to be paid to the said Francis Watkins and the Patent Nut and Bolt Company, limited, their and each of their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 25th day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein John T. Butler is plaintiff, and Francis Watkins and The Patent Nut and Bolt Company are defendants, judgment was rendered against the said John T. Butler, plaintiff, and the said John T. Butler, plaintiff, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed
75 to the said Francis Watkins and The Patent Nut and Bolt Company, defendants, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said John T. Butler shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOHN T. BUTLER. [L. S.]
" ELIJAH PEALE. [L. S.]

Sealed and delivered in the presence of—
(Signed) K. FAHER.
" W. A. PEALE.

76 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit, and district of Louisiana, do hereby certify that the foregoing 75 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of John T. Butler vs. Francis Watkins and Patent Nut and Bolt Company, No. 5835 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans, this 15 day of November, A. D. 1870.

[SEAL.] D. URBAN, *Clerk.*

[5-cent int. rev. stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 15 day of November, A. D. 1870.

[SEAL.] E. H. DURELL, *Judge.*

[5-cent int. rev. stamp affixed and canceled.]

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between John T. Butler, plaintiff, and Francis Watkins and The Patent Nut and Bolt Company, defendants, a manifest error hath happened to the great damage of the said John T. Butler, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 27th day of May, in the year or our Lord one thousand eight hundred and seventy.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 5835. John T. Butler versus F. Watkins and The Patent Nut & Bolt Company. Writ of error. Filed May 27th, 1870. F. B. Vinot, d'y clerk.

78 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Francis Watkins, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein John T. Butler is plaintiff in error and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition & writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and seventy.

E. H. DURELL, *Judge.*

79 (Indorsed:) United States circuit court. No. 5835. John T. Butler vs F. Watkins & The Patent Nut & Bolt Co. Citation in error. F. Watkins.

Marshal's return.

Received May 28th, 1870, by the U. S. marshal, and on the 15th day of November, 1870, served a copy of this citation on Francis Watkins, named herein, in the following, to wit, by handing the same to John A. Campbell, his attorney, at the office of the U. S. marshal, custom-house, New Orleans.

New Orleans, Nov. 15, '70.

JOHN FAHY,
D'y U. S. Marshal.

(Indorsement on cover:) No. 321. John T. Butler, plaintiff in error, vs. Francis Watkins and The Patent Nut and Bolt Company. Louisiana C. C. U. S. Filed 3d December, 1870.

Supreme Court of the United States

JOHN T. BUTLER,
Plff. in Error,

against

FRANCIS WATKINS and THE PATENT NUT AND BOLT COMPANY,
Def'ts. in Error.

STATEMENT.

This is an action brought by the plaintiff in error, who was also plaintiff below in the State Court of Louisiana in the Fourth District Court for the parish of Orleans.

The defendants, as alien subjects of The Queen of Great Britain, removed the case to the United States Circuit Court for the District of Louisiana.

A new petition was filed in said Circuit Court, April 29, 1869, and an answer was filed May 6, 1869, and on these pleadings the case was tried on the 10th February, 1870, and several days thereafter, and resulted on the 16th February, 1870, in a verdict for the defendants.

The plaintiff filed several bills of exceptions, and on the 19th February took an order to show cause why a new trial should not be had, and filed written reasons therefor on the 12th April, 1870. The motion for a new trial was heard, and on the 14th April,

1870, was denied, for reasons orally assigned and thereupon judgment was signed for the defendants April 16, 1870.

To review that judgment the plaintiff brought this Writ of Error.

The plaintiff's action is one that at common law would probably have taken the form of an action on the case for fraud and deceit.

It appears by the petition, page 6 of record, that the plaintiff was the owner of a patent for a certain cotton tie. That he had an understanding with the defendants for the manufacture and sale of the same, which understanding was about to be put into form as a complete contract or obligation.

The petition charges that the defendants deliberately attempted to induce the plaintiff to believe that they would make a contract with him, and to induce him thereby to neglect other opportunities of introducing his tie to market, and to keep him in a condition of expectancy and hope till the cotton season had passed, and that all the time the defendants' arts and promises had been in bad faith, without any intention ever to fulfil the same, and solely to defraud the plaintiff. That the plaintiff had relied on them, and had been thus defrauded.

The theory of the action is the wrong and injury done the plaintiff by the fraud and deceit and bad faith of the defendants.

POINTS.

FIRST.—The Court erred in rejecting the evidence offered on page 11 of the record.

It appeared that certain letters from the defendants to plaintiff had been read in evidence. It appeared, also, that one Wailey had a cotton tie respecting which he had negotiated with the defendants, and with a similar result to the negotiation of plaintiff.

The plaintiff then offered to read the letters from defendants to Wailey, with a view to show the animus of the defendants in their negotiations with plaintiff.

The Court excluded the letters, to which exception was taken (page 11).

The Court seems to have considered the mere fact of the letters being written to Wailey sufficient to exclude them as being *res inter alios*.

It will be remembered that the gist of this action is the animus with which certain things were done by or on behalf of the defendants.

If defendants commenced this negotiation, and carried it on in good faith, no action lies; but if it was commenced and carried on not in good faith, but as part of a systematic plan to keep out of the market the plaintiff's and also the Wailey tie, an action does lie.

In criminal law evidence of other takings under similar circumstances at about the same time is admissible, not as proving the other

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In criminal law evidence of other takings under similar circumstances at about the same time is admissible, not as proving the other crimes, but as tending to prove the *intent* or the animus with which the act under investigation was done. People v Jackson 1 Denio 574 Bellamy on Ev. S. 1st Ilary 135. 2d Russell on Crimes 777. Wharton Am. Crim. Law p 300 301 note 7

Similarly, this testimony was admissible to show the animus of the dealings with the plaintiff herein.

1st Greenleaf on Ev. S. 53
Carey v. Hotaling 1st Hill 311

SECOND.—The charge of the Court: "That to bind "plaintiff by the terms of the proposed agree- "ment, called the draft agreement (Doc. A.), his "signature must have been put to the same, and "so long as it was unsigned it was on his part "only an overture or proposition from which he "might withdraw at any time before signa- "ture" (p. 12, fol. 35), was error.

Whether the agreement was binding on the plaintiff or not, was utterly immaterial. The action was not on the agreement, but for the fraud in inducing plaintiff to enter into negotiations which defendants fraudulently intended as a mere sham. The charge of the Court had a tendency to mislead the jury, and to distract their attention from the real issue in the case to one of no relevancy.

THIRD.—The charge of the Court (p. 14, fol. 42): "That if the jury believe that Watkins declined "to sign the draft agreement, and informed the "plaintiff that it must go before the board of "directors of the company, and be examined "by the board, and put in form, with the cor- "porate seal attached thereto, to render it valid, "it was a notice to the plaintiff that the agree- "ment was not completed, and that it was not "obligatory upon either party until it was com- "pleted in that manner, or some other, suffi- "cient to bind the company," was erroneous for the same reasons specified under the third point.

FOURTH.—This error is perhaps more clearly shown in the bill of exceptions, on page 15 of the record. There it is clearly stated that evidence was given to the plaintiff tending to show the fraudulent and deceitful acts and purposes of the defendant, and that thereupon the defendant requested the Court to charge the jury "that "it was entirely within the power of the plain- "tiff at any time pending the negotiations or dis- "cussion to demand an immediate answer to "his proposal, or to reject the proposal, even if "it had been adopted by the company, sealed "with their seals, exactly as drawn on its return "by the company, or their agent, for his signa- "ture." Which request the Court gave as requested.

FIFTH.—The Court erred in charging the Jury: "That if the Jury believe the corporation never "gave any authority to the defendant Watkins "to assent to the proposal or draft agreement in "their behalf, and in their name, and never "sanctioned the same as a corporate act, *the* "*suit cannot be maintained against them*," (p. 16, fol. 49.)

Here the gist of the whole action is ignored. The very wrong complained of is, that defendants never did intend to enter into the contract, and of course never authorized any one to bind them by it—but that they did enter into a kind of conspiracy to make the plaintiff believe that they did intend to make the contract, while, in fact, never so intending at all.

SIXTH.—The Court erred, after reading a portion of the agreement to the jury, by which plaintiff agreed to give defendants the exclusive right to manufacture, &c., the cotton tie, in charging the jury as follows:

"That the proposed agreement, containing "the words above, is a conveyance of the ex- "clusive rights under the said patents, produced "in evidence, and must have been, under the "laws of the United States, in writing, signed "by the patentee, to give it validity against the "patentee, and recorded in the Patent Office, "to have a complete and binding effect against "the patentee, together with all other persons". (p. 18, fol. 56.)

The error is two-fold—

1st. It was not an assignment, but a contract to assign.

2d. As an assignment it was certainly perfectly valid, *inter partes*, without recording.

Robbins on Patents
§ 182. 183 + notes

SEVENTH.—The judgment should be reversed, and case remanded to Court below for a new trial.

WHEELER H. PECKHAM,
Of Counsel for Plff. in Error.

Supreme Court of the United States.

No. 321.

JOHN T. BUTLER, Plaintiff in Error,

VS.

FRANCIS WATKINS and the PATENT NUT AND BOLT COMPANY.

BRIEF OF DEFENDANTS IN ERROR.

Supreme Court of the United States.

No. 321.

JOHN T. BUTLER, Plaintiff in Error,

VS.

FRANCIS WATKINS and the PATENT NUT AND BOLT COMPANY.

BRIEF OF DEFENDANTS IN ERROR.

The general facts in this cause, as collected from the Record, are, that the Patent Nut and Bolt Company is a corporation formed under the limited liability Acts of Great Britain, for the manufacture of iron, at Birmingham, England.

The defendant, Watkins, is what is termed a managing director—that is, he is superintendent of one of the works (London works) of the corporation, and that he has co-directors.

In January, 1868, he was in New Orleans, La., and had some intercourse with the plaintiff, who has one or more patents for fastening cotton bales with iron ties.

The bill of exceptions to the instructions of the Court, state that there was evidence before the jury *tending to show* that there was "an understanding" had between the plaintiff and Watkins, acting for himself and the Company, for the manufacture and sale of the plaintiff's tie, upon the terms and conditions set forth in a document a copy of which is attached, marked "A." That when this document was handed to Watkins, he wrote the letter marked "B." That the plaintiff expressed his willingness to sign the same, but that Watkins told him that

the document "A" would have to be sent to England to undergo certain formalities to make it complete in form only, and that the paper was taken to England and was never completed in form, and that the acts of the defendants, from the beginning to the end, were fraudulent and deceptive.

The jury found that there was no fraud either in the beginning or at the end of it, and it sufficiently appears that the Court submitted that question to them.

The counsel for the defendants presented a series of instructions for the jury, a portion of which have been separately excepted to, and separate bills of exception have been taken. The case will be more intelligible if the instructions be collectively exhibited and considered. The material facts disclosed are the two documents "A and B."

The paper "A" is a paper not signed, dated nor stamped, whereby Butler, the plaintiff, of the first part, "*agrees to give to the defendants* THE EXCLUSIVE RIGHT *of making and having manufactured and selling hoops and buckles—or cotton iron ties—under Butler's patents, during their entire term from this date, in all of the States of the United States, India, Egypt, South America*, or *any other country* where they may think fit to introduce it."

The defendants were to agree to manufacture in England, America or elsewhere, at as low a price as can be done in England or elsewhere, a sufficient quantity of said Butler's cotton ties as to supply the demand for the same in the United States, India, Egypt or elsewhere, and to make *vigorous exertions* to introduce said cotton ties in *all* countries where cotton ties can be sold. There are provisions for accounts to be kept and for statements to be made, and a division of the profits after payment of expenses.

This paper A was prepared under direction of plaintiff, and was offered by him to Watkins.

The answer of Watkins is in the document "B." He says, "That he has read the draft agreement, and it seems to be about the thing. I will have the same 'put in shape' on my arrival *home*, and let you have two copies, one to retain, the other to return to me." New Orleans is accepted (excepted, probably) only for 1868. Butler offered to sign the paper, but

Watkins told him that the paper must be sent to England to undergo certain formalities to make it complete in form only, so neither party signed it.

1st. The defendants' counsel asked the Court to charge the jury, "That to bind the plaintiff by the terms of the proposed agreement, his signature must have been put to the same; and so long as it was unsigned, it was on his part an overture or a proposition from which he might withdraw at any time before signature."

2d. "That if the jury believe that Watkins declined to sign the draft agreement, and informed the plaintiff that it must go before the members of the Board of Directors and be examined by the Board. and put in form with the corporate seal attached thereto, to render it valid, it was a notice to the plaintiff that the agreement was not complete, and that it was not obligatory upon either party until it was completed in this manner, or some other, sufficient to bind the Company."

3d. That it was entirely within the power of the plaintiff, at any time pending the negotiation or discussion, to demand an immediate answer to his proposal, even if it had been adopted by the Company, sealed with seals, exactly as drawn, on its return by the Company or their agent for his signature.

This charge was given, with the addition: "I give you the charge under the supposition that the facts are found as contemplated in that charge. Either party, before the paper was signed, had the right to retire. It is something like a sale of real estate in this State. A man may agree to sell to me a house for $10,000, and I may agree to take it at that price, but until the act of sale is drawn up in writing and signed by the parties, neither is bound either to sell or purchase the house. The agreement must be in writing and signed."

4th. "That if the jury believe the corporation never gave any authority to Watkins to assent to the proposal or draft agreement in their behalf, and in their name never sanctioned the same as a corporate act, the suit cannot be maintained against them."

5th. "That the proposed agreement *A* is a conveyance of the exclusive right under the patents produced in evidence, and must have been, under the law of the United States, in writing, signed by the patentee and recorded in the patent office, to have a complete and binding effect against the patentee, together with all other persons."

6th. "That upon a just construction of the correspondence, the offers of the defendants in the name of the corporation were entirely voluntary offers, and by the terms of the correspondence were subject to their own control as to the extent of the shipments made, and there was no responsibility imposed by the loss of the shipment to Savannah, or the failure to make other shipments."

The Court said: "The charge takes the question of facts out of the hands of the jury, and turns it over to the Court. The jury have heard the correspondence read; they must judge of it as they please. They are the best judges of the case. I say, I will give that charge to the jury, with the proviso that the jury thinks that all that correspondence was not gotten up by fraud. If they are convinced it was written in fraud, and was part of a regular scheme for the purpose of injuring the plaintiff, the charge does not apply. The jury will judge of that."

7th. The Court charged the jury, "That neither of the defendants are responsible to the plaintiffs for any delay or consequences of delay in the discussion of the terms of the proposed agreement, under the testimony before the Court," with the proviso, "That the jury, under the testimony before them, come to the conclusion that this discussion and delay of settlement were not part and parcel of a settled scheme of fraud."

The object of these instructions is sufficiently obvious. The change in the law relative to the competency of witnesses, enables a party to make his own statement, to convey his own impressions, conclusions, hopes or fancies, to a jury, as if they were facts.

A very heavy task is imposed upon Courts and counsel to remove from the testimony such statements, and to place the case in its proper aspect before them.

It was the object of these instructions to define the legal operation of the acts of these parties.

There are about one hundred patents for the fastening of hoop iron to a bale of cotton so as to hold the bale in a compact form and condition, most of which operate alike.

This proposal was made to an English Company, of very large capital, to take this *cotton tie* and vigorously propagate it over the three continents, (America, Asia and Africa,) where cotton is planted. It required some knowledge of a peculiar law in each to ascertain whether the patent had value. On the face of the paper it is incomplete.

There is no date, nor signature, nor stamp to it. The evidence of the witness tended to prove "an understanding" between the plaintiffs and defendants, that there was a finished contract, only wanting formalities.

The charges asked for from the Court were designed to bring to the knowledge of the jury the legal effect of the evidence submitted by the plaintiff. He produced an unsigned, undated and unstamped paper to transfer the sole and exclusive right of the patentee to unexpired patents, and to obligate a manufacturing corporation in another country to use "vigorous exertions" to extend the use of the article over the cotton growing world. When asked why he had not signed the paper, he accounted for it by saying that the defendant did not permit it. That that party said it must go to England to be put in shape, and that two copies should be prepared, one for each party.

The transfer of such an interest as the one described must be in writing, and in this case both parties understood a writing signed by the parties was proper.

The agreement proposed in this case was of an entire interest over the whole territory of the United States and elsewhere. If executed, it would have been treated as an assignment of the patents, under the conditions specified.

Brooks vs. Bryan, 2 Story, 525.
Railroad Co. vs. Trimble, 10 Wallace, 367.
Potter vs. Holland, 4 Blatchford, 206.
Civil Code, see Arts. 2237-2241.

But the evidence shews conclusively that the paper "A" was not intended to be an agreement. The petition and the evidence called it "an understanding." What the understanding was is shewn by document "B."

In that document it is called a draft agreement; that it must be taken to England "to be put in shape;" that an exception or modification was not inserted in the draft; that this paper was not to be used, but that two copies would be prepared in England for the respective parties. Subsequently to this, the plaintiff offered to sign this paper, and his signature was declined, for the reason that there were changes to be made. We may infer that Watkins said that it must be placed before the Company and its seal attached. Formalities of a very important character

16 Q. B. Reports, 229.

A letter of the defendant Watkins, (Record, page 2,) dated as soon as he arrived "at home," informs Butler that his proposition has been laid before the co-directors, and "had a favorable consideration." He tells them of their caution and deliberation, and "that a few facts in relation to cotton ties and cotton tie business, had to be considered before the agreement is completed." The plaintiff has not brought the correspondence as a part of the bill of exceptions, though some of the exceptions are unintelligible without it.

But not one word of Watkins' can be quoted to show that the paper, "A," was anything more than a project he was willing to place before his board with a recommendation that some agreement on that should be made.

It was a "draft agreement;" a project to be put in shape; "just about right."

As a complete contract, it was entirely insufficient.

It is a general principle, that when parties enter into any agreement, and the understanding is that it is to be reduced to writing, or if it is already in a written form, that it is to be *signed* before it is acted on or to take effect, it is not binding upon them until it is so written and signed. The whole matter is in "fieri," and there is no binding agreement. The case

of Boyd vs. Hind, 36 L. & Equity Rep. 566, is to this effect.

The Gov. vs. Petch, 10 Exch. 610.
Crane vs. Partlund, 9 Mich. 492.
32 Barbour, 388.
21 Beavan, 4.
4 Car. & B. 312.

In this last case, the approval of a "draft" was not regarded as a contract.

In the case before the Court, the "draft agreement" was a memorandum from which a formal technical agreement or assignment might be made, and whatever provisions of the laws of different countries upon the subject of such assignments, were to be considered and conformed to.

When thus made and sanctioned, two copies were to be sent to the plaintiff, one of which he was to execute and return.

If this statement of the case be accurate, the first instruction is undoubtedly exact. The plaintiff did not become bound until the proposition in all of its parts was accepted as made. He offered this as complete. He offered to put his signature to it. This paper was declined with the additions proposed. The letter "B" shews that in reference to New Orleans there was to be a modification not settled in the paper "A." The subject matter of the proposition was the assignments of patents. The assignments of patents can only be made in a complete writing by the plaintiff, which the defendant was satisfied to receive.

The second prayer was intended to obtain the judgement of the Court upon the position of the plaintiff during the negotiation and discussion.

Watkins in his letter marked "A," and the letter on page 20—(Record,) treated the negotiation as pending and complete. He took the paper "A" for consideration, modification, and to be prepared for execution—until the papers were received, and finally approved by Butler, he was not bound. The assignment in writing, that the patent laws require, and the mutual assent to the papers to be prepared for the "draft" were to be made, assented to and signed. Butler might retreat at any time before these things were done.

1 Parson's on Contracts, Book 2, Ch. 2.
Duvall vs. Carr, 14 Peter's R. 77, 8 Exchr., 185.

It is clear that this is but a treaty for an assignment of the patent under the terms set forth in the paper "A," not perfected into an agreement, and that there was no intention of binding either party until the signature of the papers.

Boston M. R. vs. Bartlette, 2 Cush., 224.
5 Stewart & Porter, Ala. R , 264.
1 Paige, Ch. R., 434.
4 Gill & J., 1.
1 Wheat, 151.

The charge in the petition is, that Watkins, for and in behalf of himself and the said Company, had "an understanding" with the plaintiff in relation to the manufacture and sale of the petitioner's invention, and that he promised that the tie would be manufactured and sold after certain formalities were complied with.

The entire gist of the action depends upon the existence of the understanding as a legal, binding, and obligatory contract, and that the corporation, Patent Nut & Bolt Co., was properly a party to that understanding, by the power given to Watkins, or that he derived from his office.

The defendants on behalf of the corporation asked the Court, "to charge the jury that if the corporation had not authorized Watkins to assent to the paper B., and had at no time given an assent to it, that the suit must fail on that contract." The proof offered, and to which this instruction related, was only that Watkins was a director and a stockholder, and had come to the United States upon the business of the Company for the sale and manufacture of cotton ties. No possible inference could be drawn for such evidence, that the Company had authorized such a contract.

The covenants contained in that paper go far beyond the manufacture and sale of cotton ties in the U. S. The corporation is to be bound for years to carry on business under a patent. That the business must be spread over the cotton planting region of the earth; that agents are to be employed to use "vigorous exertions" everywhere. The corporation cannot

be affected by the plaintiffs representations of his impressions of Watkins' conversations. The corporation can only be bound by an act they authorized.

It is not at all clear, that the Directors of the Company could make such a partnership as is set forth in that paper.

The members of the Company might dissent.—16 Q. B. R., 229.

The instructions prayed for in the bill of exception, on pages 19 and 20, and numbered six and seven in this brief, asked the opinion of the Court upon the case stated in the latter part of the petition, and which may be termed the second count. The letter which is attached to that bill of exceptions was written for the words of the Company, at Birmingham, England, after his return home in April, as stated in the petition. The co-directors had the proposition under consideration, and were favorably impressed—but the board was very particular about what they were to do, and were to consider the cotton tie business before the agreement is completed. The bill of exceptions states, that this letter with others were offered in evidence by the plaintiff to sustain the allegations. It is fair to infer that the defendants offered correspondence resolutions of the Board of Directors, the reports of the solicitors of the Company upon tbe projects.

The defendants, in one of the instructions, asked the Court to construe the correspondence, and to declare to the jury upon that correspondence, the offers were voluntary and were subject to the control of the corporation as to the extent of the shipments made, and that there was no responsibility imposed by the loss of the shipment to Savanah, or to the failure to make either shipments.

Before this Court can understand this prayer, and therefore, before the Court can interpret it, the correspondence should be presented; only a single letter is attached to the bill, and the bill states there was other correspondence, and the same is implied in the frame of the prayers.

The Court declined to give the instruction except under a qualification. The correspondence, the Court stated to the jury, meant this. The only letter of Watkins' produced, implies that the Company was to decide what should be done, and that

very moderate expectations were to be indulged. The concluding charge is based upon the whole evidence before the jury.—The whole evidence, we are authorized to infer, showed there was an overture by the plaintiff. That Watkins favored the adoption of some arrangement, and agreed to submit it to his Company, that he informed the plaintiff, that the agreement if adopted must be *sealed* by his Company.

That his Company was slow in adopting the agreement, and deferred, with circumspection and care, under the advice of the solicitors of the Company, an agreement which was not acceptable to the plaintiff.

If the evidence did not plainly, manifestly show this, the plaintiff should have put the testimony before the Appellate Court. It was in writing.

These bills of exception were all prepared by the plaintiff's counsel, and were signed against the will of the defendant's counsel, as not giving a more full, clear and distinct account of the state of facts exhibited by the evidence and referred to in the instructions submitted.

When the ruling of a Court on letters and papers is made the subject of one exception, they must be inserted in the bill, that the Appellate Court may precisely know the import of the instruction given or refused.

21 Law Reporter, 521.
1 Black, 437.
6 Wiscon. R. 490.
9 Ohio N. S. 1.
Carroll vs. Peake, 1 Peters S. C. R. 18.
2 Black, 575.
4 W. & Serg. 570.
10 Gray, R. 285.

The exception to the exclusion of testimony, on page 11, will be considered at this stage, because there is an objection to that bill, for grounds similar to those offered in reference to the exception to the charge just considered. In the progress of the trial certain letters, written to Wailey, a witness, were offered. These letters, it is said, were written in the spring and summer

of 1868, and that they led Wailey to believe that the contract between Wailey and the defendants would be carried out, and Wailey's testimony, in connection with those letters, was offered to prove the deceitful conduct of the defendants towards Wailey—to prove that the conduct to the plaintiff was also fraudulent. The letters offered are not attached to the bill, nor the evidence offered—only—that it was to prove deceitful and fraudulent conduct to him, *having for its purpose to keep his tie out of market*. This was objected to as res inter alios acta, and the objection was sustained. Prima facie the testimony was irrelevant. The general principle is, that no reasonable presumption can be formed as to the making or executing a contract with one person, in consequence of the mode in which he has made or executed a contract with another person. Still less can a party be affected by the contract, conduct or dealings with strangers. Transactions which fall within either of these classes, are res inter alios acta, and the evidence has been uniformly rejected.

1 Phil. Ev. ch. X, § 3.
11 A. & E., 131.
7 Cl. & F. 122.

The proffer was of certain letters that led Wailey to believe a certain fact, and with these letters Wailey was called to prove that these letters were deceitful and fraudulent practices upon Wailey.

The competency of the testimony depends upon the letters themselves. What did they prove? Were they calculated to prove fraud upon Wailey? Did that fraud tend to affect the case of Butler? The Court cannot decide the evidence to be competent without a statement of the evidence.

The cases cited upon this subject, in the discussion upon the last instruction, apply to this point.

25 Penn. St. Rep. 259.
17 Texas R. 62.

We admit there are cases in which a plaintiff may introduce contemporaneous acts of a defendant, to show the motive for the acts complained of by him. The facts of contempora-

neous, fraudulent invoices passed through a custom house, were allowed to prove that there was a fraudulent motive in respect to a particular invoice. Frauds upon different creditors or purchasers may be used to prove a fraud upon one creditor. 14 P. 342—23 H. 173. But the testimony offered here, would have put a new case before the jury. Evidence must have been taken to rebut the fact that there had been a contract with Wailey, and all the correspondence and acts between these parties must have been introduced to prove there were no relations of contractors, nor of overreaching acts between them. We may well assume that the corporation in Great Britain were will informed of the condition of the supply in the American market; that a ruling of the treasury department had doubled the duty on cotton ties, and that all shipments in 1868 were unpromising, or promised a loss, and that these parties were assured of these facts.

The parties must have understood the construction of the patent laws and the laws of contracts, and that no contract or obligation existed. The power of self protection was perfectly ample. No Court would have sustained a bill for a specific performance against either Butler or Wailey. The answer, that there was no contract, would have been conclusive.

6 H. of Lords R. 238–268–305.
21 L. & Eq. Rep. 1.

Where there was no legal duty, there cannot be a recovery by stigmatising the conduct as *malicious*, *deceitful* or *fraudulent*. The parties must take care of their own interests.

Stevenson vs. Newman, 18 C. R. Rep., 285.
Bailey vs. Merrill, 3 Buls., 94.

Their own interests were at all times and under all conditions under their own control.

Neither one of these parties pretend, that the defendants own their patents.

The case does not show that there is a shadow of title or claim by the defendants to them. So far as the evidence of the

writings of the defendants have been produced in the bill of exceptions, they show that there were no expectations held out, and no representation that there was any contract at all.

The case seems to be wholly speculative, and unsupportable on the part of the plaintiff.

JOHN A. CAMPBELL.

In the Supreme Court of the U. S.

JOHN T. BUTLER
vs.
FRANCIS WATKINS, AND PATENT NUT AND BOLT COMPANY.
} No. 122.

BRIEF OF P. PHILLIPS.

This was an action to recover damages for the fraudulent refusal to carry out an alleged "understanding" between the plaintiff and defendants.

One of the defendants is a foreign corporation in the Kingdom of Great Britain; the other is a stockholder and agent of said corporation.

On the trial there was a verdict and judgment for defendants, to which judgment this writ of error is prosecuted.

The complaint is, that the Judge improperly excluded certain evidence in the progress of the trial, and gave certain charges to the jury, requested by defendants. *The plaintiff below and the plaintiff in error here, asked for no instruction*, but rests his case on such criticisms as may be made on the charges given on the request of defendant.

It was the duty of the counsel for the plaintiff, if he deemed the instructions or any of them too broad, to ask for such limitations as his case required. The attention of the judge would have been then called to the precise

legal issues between the parties, and the refusal of the judge to grant the prayer, would have placed upon the record the matters of law on which plaintiff in error relied.

Suppose these instructions had been given by the Court without having been asked for by defendants. In such case, the revisory court would not weigh with very nice scales the accuracy of the charges given, and for the reason already assigned, that they could have been made more precise by the presentation of charges in the form, warranted by law.

The claim for damages in not carrying out the "understanding," rests solely on the papers A and B, offered by the plaintiff.

The paper A is a draft of an agreement by which the plaintiff is to give to defendants the exclusive use of a certain patent for cotton ties, for the full term of said patents, in half the world—in consideration that the defendants should manufacture the article and allow certain portion of the profits arising from the sale. This paper was drawn at New Orleans. It is neither signed nor stamped.

The paper B is a letter of Watkins to plaintiff, 3 February, 1868, in which he states, that he will have the paper A *put in proper shape when he arrives in England*, and then he would send two copies, *one to be retained by the plaintiff*, and *the other to be returned to him.*

This is all the evidence the record contains of the "understanding" on which the action is based, and if this does not constitute an agreement effective in law, then the action is without foundation, and the judgment for defendants should not be reversed, for no recovery can ever be had thereon.

Every agreement must not only be certain, but it must be complete, so that each party might have an action upon it. No obligation is imposed by a mere affirmation or offer to enter into an agreement; it is binding on neither until it is definitely and expressly assented to by both parties.

In Lambourn v. Pedgriph, there was a draft of an agreement as in this case, but there was also endorsed on it the following: "we approve the within draft," and this was signed by the parties.

It was maintained by counsel, that if this was not an agreement, it was at least evidence of an agreement, and must, therefore, bear a stamp.

By Lord Tenderden—"I think not; it merely amounts to this, that it is evidence of something they intended to agree to. I think the words "we approve of the within draft" do not import an agreement. Indeed, if they did, there would never be any necessity for any other instrument." 4 Car. & P., 312.

The completion necessary to the validity of a contract is to be determined by ascertaining the intention of the parties. The subject-matter, and the character of the parties, are material to be considered in this connection.

Here on one side patent rights were to be conveyed, which pass under the statutes by written assignments, on the other hand a large undertaking for manufacturing by a foreign corporation, and the negotiation is with an agent in this country.

If, therefore, it should appear from these considerations that the "understanding" averred in the declarations, was to be reduced to writing and executed, then it is conclusive, that until these things concurred, there was no effective agreement.

Boyd v. Hind, 36 Eng. Law, & E., 568.

Memphis R. R., 10 Wall., 38.

Thus when the intent is shown to make a contract in duplicate, so that each party may be furnished with evidence of his rights, the contract is not complete until the duplicates are executed and delivered.

Crane v. Portland, 9 Mich., 493.

Looking then to the subject-matter, and the corporate character of one of the parties, and its location in a foreign country far distant from the place of negotiation without more, the strongest presumption would arise that the "understanding" was not to be perfected until some written instrument was signed and delivered.

We are, however, not left to rely on *presumption*. The paper B offered by the plaintiff places this question beyond doubt. It is shown that as soon as Watkins received the paper A, he writes the plaintiff "that he had read the *draft agreement*, that it was *about right*, that he would have it *put in shape when he arrived home*, and would *then send two copies, one to be retained, and the other returned.*

The plaintiff is thus informed, that Watkins considers the paper A only as a draft agreement, that he did not regard it as entirely correct in the statement of its terms, that it was to be put in shape—that this would not be done until he returned home, and that when completed it was to be in duplicate.

It is very evident that Watkins either had not the power to bind the corporation or was unwilling to exercise it. If he possessed both the power and the will, why was not the agreement executed in New Orleans?

Thus the "understanding" is allowed to rest until 17

April, 1868, when Watkins writing to plaintiff from England says: "I have laid your PROPOSITION *before my co-directors.* They have given it a favorable consideration, but there are *some facts to be considered* before the *agreement is completed.* p. 120.

No doubt could now remain in the mind of the plaintiff, if any had before existed, that the "understanding" was to be subject to the approval of the corporation, and that as to what had theretofore transpired, Watkins was acting in reference to this approval. If the plaintiff held the "understanding" otherwise, he was free to withdraw from it.

Dealing with an agent under these circumstances, there is no ground in reason or in law to look for a completion of the "understanding," until it had been approved by the corporation.

Abbe v. Rood, C. McL., 106.

This constitutes the whole evidence offered by the plaintiff to show the "understanding," and being all in paper, the question whether it amounted to a valid and binding obligation might properly have been determined by the Court.

Bliven v. New England, S. C., 23 How. 432.

But here the plaintiff had the full benefit of the jury as to any inferences which could be drawn from any circumstances, for in reply to the request of the defendant for a charge upon the construction of the contract, the Court said:

"The charge takes the question of fact out of the hands of the jury, and turns it over to the Court. The jury have heard the correspondence read; they must judge of it as they please. They are the best judges of

the case. I say I will give the charge to the jury, with the proviso, if the jury think that all that correspondence was not gotten up by fraud; if they are convinced that it was gotten up in fraud, and was part of a regular scheme for the purpose of injuring the plaintiff, the charge does not apply, the jury will judge of that."

The defendant also requested the charge that under the evidence they were not responsible in damages for any delay in the discussion of the terms of the proposed agreement. This the Court gave, adding: "I will give that charge with the proviso that the jury, under the testimony before them, come to the conclusion that this discussion and delay of settlement were not part and parcel of a settled scheme of fraud." p. 20.

The finding of the jury thus conclusively negatives the fraud, and leaves the correspondence in good faith, and to its just interpretation on that basis.

In the motion for new trial, it is alleged "that the Court erred is *not informing the jury* that the present action was in part based upon fraud and deceit in not signing the contract, and therefore the want of signature could not be pleaded in defence." p. 20.

To this there are two answers.

First, that the charges above quoted do include, by fair construction, this information, and

Second, whether it does or not under the rules of practice, no such ground can be assumed on writ of error. It was the duty of the party to ask for the charge.

The petition in this case is in the nature of an action for deceit; and admitting all that is pretended, as to the hopes held out, and the promises made, we deny that they constitute any legal ground for the recovery of damages.

Fraud and damage may concur in a given case, and

yet no action be maintainable. The means used must not only be such as would impose upon a party of ordinary prudence, but they must be such as deprive the party of a benefit, which, in point of law, he has a right to expect. 2 Stark Evid., 467.

In Dyer v. Tilton, the action was held not authorized where false representations were made by defendant as to his pecuniary responsibility, whereby the plaintiff was induced to sell him property upon credit. 23 Verm't, 313.

So, in Fisher v. Brown, where by false representations the purchaser obtained credit on the maturing of a contract, the Court said the conduct of the defendant, as exhibited in the declaration, was highly reprehensible, but it would be dangerous and unprecedented to sustain an action in the case upon the traverse of such false assertions. 1 Tyler, 404. Gallagher v Brownell 6. Cow 350

That it is not every promise that will sustain a remedy was decided at this term in the case of Christmas. C. had in several letters pledged himself to his sureties to hold a certain note sacred for their indemnity. The proceeds of that note were in the possession of the court in which the bill was filed to subject them to the payment of the obligation. The Court held that this was a mere promise to pay out of the proceeds, and did not amount to such an agreement as equity could enforce.

It was the duty of plaintiff in the exercise of ordinary prudence to demand at any time an immediate and postive answer from the defendants as to their acceptance. This required but a few weeks by steamer and a few hours by telegraph. There is nothing in the letter produced to throw him off his guard, but on the contrary every thing to throw doubt on the acceptance.

In this view of the case, which admits that false hopes may have been held out, the action is without foundation, and the letters which were offered as tending to prove that these defendants had made false representations of a like nature to one Wailey were properly excluded.

Even if the rejection of this evidence was erroneous, still, if the plaintiff could not have recovered if they had been admitted, the error constitutes no ground for reversal. This rule has been applied by the Court in a very large number of cases.

Greenleaf's lessee vs. Birth, 5 Pet., 125.

Randon vs. Toby, 11 How., 518.

P. PHILLIPS,

Of Counsel for Defendants in Error.